In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1079

SEYMOUR ROSENFIELD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. After a jury trial in the United States District Court for the Eastern District of Pennsylvania, petitioner was convicted of willfully failing to file tax returns for the years 1964 through 1967, in violation of 26 U.S.C. 7203. Petitioner was sentenced to six months' imprisonment, to be followed by probation for three years, and fined $10,000. The court of appeals affirmed (Pet. App. A). Petitioner here challenges the admissibility of evidence pertaining to his actual income and tax liabilities for the prosecution years and the correctness of the jury instructions on the question of willfulness.

At trial, petitioner admitted that he had not filed tax returns for the prosecution years and that he was aware that he had a duty to file (R. A-121, A 147 to A-148).[1] He

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[1] "R." refers to the record appendix in the court of appeals.

claimed, however, that since he had not known that a failure to file was subject to criminal sanction, his failure had not been willful (R. A-149). As part of its case on willfulness, the government introduced evidence that petitioner's net income and tax liabilities for the prosecution years were as follows (R. A-33, A-36, A-5):

Year	Net Income	Tax
1964	$78,373	$45,662
1965	$108,353	$58,537
1966	$266,786	$169,440
1967	$165,265	$98,375

The district court instructed the jury on the question of willfulness as follows (Pet. App. A, 3, n. 1):

> * * * The word 'wilfully' * * * means deliberately * * * intending not to file a return which defendant knew he should have filed * * *.
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> * * * [T]he failure to file the returns must be the wilful result of some bad intent * * * [but] specific knowledge that this conduct has in fact been made a criminal offense is not necessary to the offense. As long as the inexcusable intent is present, it is not necessary that the defendant know that his conduct is subject to criminal penalties. This is what is meant by the old saying, 'Ignorance of the law is no excuse,' and it applies in this case.
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> This is not to say that the defendant would have committed any crime if he were totally ignorant of the requirement under the tax laws to file a return * * * but only that * * *[i]t is no defense that defendant was not aware of the criminal penalties for his failure to file.

2. The evidence pertaining to petitioner's income and tax liability was introduced solely to show willfulness (R. A-5). Contrary to petitioner's contention (Pet. 7-11), evidence of substantial earnings and tax liabilities establishes a motive for failure to file a return and thus, as the court of appeals correctly stated, "is very probative as to the element of wilfulness" (Pet. App. A, 2). See *United States* v. *MacLeod,* 436 F. 2d 947, 950 (C.A. 8), certiorari denied, 402 U.S. 907, rehearing denied 402 U.S. 990.

Petitioner also contends (Pet. 11-14) that willfulness under Section 7203 requires specific knowledge that failure to file is subject to criminal sanction. But it is well established that "willfully" has no such specialized meaning in Section 7203: proof of willfulness under that Section requires no more than the showing of an omission committed intentionally, with knowledge of a duty to file. See, *e.g., Turnof* v. *United States,* No. 72-917, certiorari denied, March 5, 1973; *Lachmann* v. *United States,* No. 72-1032, petition for certiorari pending. And petitioner at trial admitted knowledge of a duty to file and of the existence of civil sanctions for failure to file (R. A-148 to A-149).

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1973.